

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-0161P**

**Sales & Use Tax**

**For the periods August 31, 2002, October 31, 2002, November 30, 2002, April 30, 2003, May 31, 2003, June 30, 2003, July 31, 2003, and August 31, 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

II. **Tax Administration** - Interest

**Authority:** IC 6-8.1-10-1

The taxpayer protests the interest assessment.

**STATEMENT OF FACTS**

The late penalty and interest were assessed on the late filing of monthly sales tax returns for the months of August 31, 2002, October 31, 2002, November 30, 2002, April 30, 2003, May 31, 2003, June 30, 2003, July 31, 2003, and August 31, 2003.

The taxpayer is a sole proprietorship located in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be waived as the errors were the result of the in-charge bookkeeper (the wife of the taxpayer) having an incapacitating illness. The incapacitating illness prevented the bookkeeper from properly filing the monthly sales tax

returns for the aforementioned periods. The taxpayer did not become aware of the degree of the bookkeeper's illness until October 2003 upon counsel from the doctor.

The taxpayer also cites a good payment history as a factor in waiving the penalty.

With regard to the incapacitating illness, the Department waives penalty in the event of an incapacitating illness. In the instant case, the doctor's letter states the bookkeeper was incapacitated through the year 2003. Nothing was said about 2002.

With regard to the payment history, the Department notes the taxpayer has had several errors in previous periods. The Department does not feel the taxpayer has established a good payment history that would be a factor in waiving penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds incapacitating illness to be cause in not filing the tax returns on time. The doctor's letter covers the periods of the calendar year 2003. Thus, the penalty protest is sustained for the periods April 30, 2003, May 31, 2003, June 30, 2003, July 31, 2003, and August 31, 2003. The penalty protest for the periods in the calendar year 2002 are denied. These periods are August 31, 2002, October 31, 2002, and November 30, 2002.

### **FINDING**

The taxpayer's penalty protest is sustained in part and denied in part.

#### **II. Tax Administration – Interest**

Interest may not be waived according to statute. IC 6-8.1-10-1.